

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 11-CR-20468

v.

HON. ARTHUR J. TARNOW

D-14 CHETAN GUJARATHI,

Defendants.

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**ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE THE  
ORDER OF JUDGMENT TO CONTINUE THE SENTENCING *NUNC PRO  
TUNC* TO COMPLETE THE SENTENCING RECORD TO INCLUDE THE  
COURT'S RULING ON DEFENDANT'S MOTION FOR VARIANCE**

Defendant Chetan Gujarathi, who is currently incarcerated, filed Motion to Set Aside the Order of Judgment to Continue the Sentencing Hearing *Nunc Pro Tunc* to Complete the Sentencing Record to Include the Court's Ruling on Defendant's Motion for Variance. A response has been filed by the Government.

Defendant argues in his motion that he is entitled to reopening of his sentencing hearing, because the Court did not mention or decide his motion for a variance from the guidelines recommendation.

The Government responds by arguing that the Court no longer has jurisdiction to modify or reopen the sentencing hearing.

The Court does not have to decide the question of jurisdiction, because the motion lacks merit.

The Court informed the parties that it was granting the prosecutor's 5K1.1 motion for downward departure. The effect of that was to further make the guidelines advisory.

The concept of a variance is less relevant once a downward departure has been made and granted. Rather, the required analysis is to consider the Congressional factors set forth in 18 USC Section 3553aa).<sup>1</sup>

THE COURT: ...The guidelines are just that. Guidelines are twice removed from the actual sentence, one, because they are advisory and, second, because I have just granted a motion for downward departure, which means I can do anything I want as long as I can justify it under the statute. And the statute is the act of Congress, 18 USC Section 3553(a), which sets out all sorts of factors. And I should put on the record that I have decided that it's a Level 25, Category I, which is 57 to 71 months of the guidelines.

(Sentencing Transcript, 10/15/14, 15:42 p.m.)

A long discussion of the Congressional factors followed.

Given the lack of merit, the Defendant's motion is denied.

Accordingly, **IT IS ORDERED** that Defendant's Motion to Set Aside the Order of Judgment to Continue the Sentencing Hearing *Nunc Pro Tunc* to Complete

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<sup>1</sup> The word variance was not mentioned by the Court or either party at sentencing as it was no necessary.

the Sentencing Record to Include the Court's Ruling on Defendant's Motion for Variance is **DENIED**.

s/Arthur J. Tarnow

Arthur J. Tarnow

Dated: January 21, 2015

Senior United States District Judge